

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD DEAN MERTEN,

Plaintiff,

V.

WELDON MARK GILBERT, PIERCE
COUNTY JAIL, and OFFICER
GARDNER.

Defendants.

No. C11-5641 RBL/KLS

**ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL**

Before the Court is Plaintiff's motion for the appointment of counsel. ECF No. 14.

Having carefully reviewed Plaintiff's motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's motion should be denied.

DISCUSSION

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]

1 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
2 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
3 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
4 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
5 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
6 1101, 1103 (9th Cir. 2004).

7
8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
10 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
11 facts during litigation. But, if all that was required to establish the complexity of the relevant
12 issues was a demonstration of the need for development of further facts, then practically all cases
13 would involve complex legal issues. *Id.*

14
15 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate
16 his claims *pro se*. Plaintiff claims that he was sexually assaulted by another inmate and that
17 Defendant failed to protect him from the assault. ECF No. 6. Plaintiff is requesting appointment
18 of counsel so that he may be properly represented, it is difficult to “do what needs to be done
19 while [he] is incarcerated” and so that counsel can advise him of his rights and obligations. ECF
20 No. 14. Plaintiff has set forth his claims clearly in his complaint and there is nothing unusual or
21 complex about Plaintiff’s claims.

22
23 The Court finds no exceptional circumstances in this case. While Plaintiff may not have
24 vast resources or legal training, he meets the threshold for a *pro se* litigant. Moreover, Plaintiff
25 has not shown a likelihood of success on the merits.

Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 14) is **DENIED**. The Clerk is directed to send copies of this Order to Plaintiff.

DATED this 23rd day of January, 2012.

Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge